## IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF OKLAHOMA JAN 1 2 2009

SAHIB QUIETMAN HENDERSON,	ROBERT D. DENNIS, CLERK U.S. DIST. COURT, WESTERN DIST. OF OKL
Plaintiff,	BY W. H- DEPUTY
VS.	) No. CIV-07-1174-W
JUSTIN JONES et al.,	)
Defendants.	)

## ORDER

On December 17, 2008, United States Magistrate Judge Bana Roberts issued the Fourth Report and Recommendation in this matter and recommended that the Motion to Dismiss filed pursuant to Rule 12(b)(6), F.R.Civ.P., by defendants Justin Jones and Edward Evans be denied. The parties were advised of their right to object, but no objections were filed within the allotted time.

Upon review of the record, the Court concurs with Magistrate Judge Roberts' suggested disposition of this motion and further concurs with her comment that these defendants retain the option of filing a properly supported motion under Rule 56, F.R.Civ.P., and asserting therein the affirmative defenses of failure to exhaust and timeliness.

Accordingly, the Court

- (1) ADOPTS the Fourth Report and Recommendation issued on December 17, 2008;
- (2) DENIES the Motion to Dismiss [Doc. 74] filed by Jones and Evans on August 29, 2008; and

(3) the referral not having been terminated in this action, COMMITS this matter to Magistrate Judge Roberts for further proceedings.

ENTERED this 12th day of January, 2009.

LEE R. WEST

UNITED STATES DISTRICT JUDGE